IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-509

JOSEPH MONTY,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK

SPIROS A. TSIMBINOS and
WILLIAM S. KOHN
Attorneys for Petitioner
Office and P.O Address
125-10 Queens Boulevard
Kew Gardens, New York 11415
Telephone: (212) 699-6110

MAURICE H. NADJARI
Deputy Attorney General
Special State Prosecutor
Office and P.O. Address
2 World Trade Center
New York, New York 10047
Telephone: (212) 466-1250

October 23, 1974

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To the Honorable The Chief Justice, and Associate Justices of the Supreme Court of the United States:

Joseph Monty, petitioner herein, respectfully prays that a writ of certiorari be issued to review the judgment of the Appellate Division, Second Department, of the New York State Supreme Court which affirmed a judgment of the Supreme Court, Queens County, convicting

the petitioner of the crimes of Bribe Receiving and Receiving Reward for Official Misconduct under Sections 200.10 and 200.25 of the New York State Penal Law. The New York State Court of Appeals has denied petitioner leave to appeal to that court and petitioner has exhausted all of his state remedies.

OPINIONS BELOW

The opinion of the Appellate Division, Second Department, of the Supreme Court of the State of New York affirming petitioner's conviction and the Order of the Honorable Harold A. Stevens, Judge of the New York Court of Appeals, denying leave to appeal to that court are as yet officially unreported. Copies of said opinions, however, are made a part hereof and are set forth in Appendix A.

JURISDICTION

The judgment of the Appellate Division, Second Department, of the Supreme Court, State of New York reaffirming petitioner's judgment of conviction was entered on July 29, 1974. Application for leave to appeal to the New York State Court of Appeals was denied on August 5, 1974. The jurisdiction of this court is invoked pursuant to Title 28 U.S.C., Section 1257(3).

QUESTIONS PRESENTED

1. Whether the petitioner was denied due process and equal protection of the law under the Fourteenth Amendment where the Governor of the State of New York by specific designation appointed a particular judge to hear the petitioner's case while other defendants in the same county where the petitioner was tried, by court rules, had judges assigned to their cases by lot and random selection.

2. Whether the petitioner's constitutional right of confrontation was violated by the allowance during the trial of substantial hearsay testimony.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved in this case are the Sixth and Fourteenth Amendments to the United States Constitution. Under state law the appointment by the Governor of the specific judge in question was designated under Article 6, Section 27, of the New York State Constitution and Section 149 of the New York State Judiciary Law. (See Appendix C).

STATEMENT OF THE CASE

On September 19, 1972 the Governor of the State of New York, by Executive Order, established the Office of Special Prosecutor of the State of New York with jurisdiction to conduct investigations and proceedings against any and all corrupt acts and omissions by public officials "arising out of or connected with the administration of criminal justice of the City of New York." By said Order the five elected District Attorneys of the City of New York were superseded in this particular area and in conjunction with the appointment of the Special Prosecutor, Judge John M. Murtagh, Justice of the Supreme Court, New York County, was specifically designated by the Governor to hear all cases arising out of prosecutions by the Special Prosecutor. A copy of said Executive Order is made a part hereof and set forth in Appendix B.

Shortly after the appointment of the Special Prosecutor JOSEPH MONTY was arrested and charged with various counts of bribe receiving and official misconduct allegedly stemming from his position as the Chief Rackets Investigator in the Office of the Queens County District Attorney. A trial of the issues was had before the Honorable Justice Murtagh and a judgment of conviction was rendered by the jury

on November 5, 1973 with regard to the crimes of bribe receiving and receiving reward for official misconduct under Sections 200.10 and 200.25 of the New York State Penal Law. Thereafter, on March 18, 1974 JOSEPH MONTY was sentenced to an indeterminate term of imprisonment not to exceed four years. He commenced serving his sentence on September 16, 1974.

REASONS FOR GRANTING THE WRIT

THE PROCEDURES ESTABLISHED BY EXECUTIVE ORDER AND UNDER WHICH JOSEPH MONTY WAS TRIED PER SE ARE DISCRIMINATORY AND VIOLATE DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

The specific designation of a particular judge to try all of the cases initiated by the Special Prosecutor is discriminatory and violates both due process and equal protection of the law under the Fourteenth Amendment. In the County of Queens by specific court rules and in both the Federal Courts for the Eastern and Southern Districts, the assignment of judges to try cases is specifically designated to be a random selection where the judges are picked by lot. (See Rules

of the Supreme Court, Queens County, Section 796.5; Individual Assignment and Calendar Rules for the Eastern District, Rule 2; for the Southern District, Rules 4 and 11.) In New York it appears that court rules which are legally adopted have the force and effect of statutes and are binding on tribunals to which they are applicable. In re Matter of Moore, 108 N.Y. 280; In re Pequenos', 177 Misc. 223. The importance of assigning judges by lot has been recognized by the courts and even under Federal statutes provision is made for the disqualification of a judge upon the submission of an affidavit alleging bias or prejudice. See 28 U.S. Code 144 and U.S. v. Garrison, 340F. supp. 952 (D.C.E.C. La. 1972). In Garrison, the court stated all cases should be assigned to judges on a random basis and it should never be of any moment to a judge as to whether or not he sits on a particular case.

The specific designation of Judge Murtagh to handle Mr. Monty's case and all other cases initiated by the Special Prosecutor thus violates the Rules of the Supreme Court, Queens County, and leads to a denial of due process and equal protection of the law. It has been continually held that constitutional guarantees of due process and equal protection call for procedures in criminal trials which allow no invidious discrimination between persons and different

groups of persons. Griffin v. Illinois, 351 U.S. 12. In Griffin, supra, the Supreme Court citing Chambers v. Florida, 309 U.S. 227 and Yick Yo v. Hopkins, 118 U.S. 356, stressed that the central aim of our entire judicial system was that all persons charged with crimes must so far as the law is concerned stand on an equality before the bar of justice in every American Court. It has been consistently held that criminal laws of the state must be applied equally to all defendants. The court in Loper v. Beto, 440 F. 2d 934 (5th Cir. 1971), rev on other grounds 405 U.S. 473 (1972), stated at page 941:-

> "It is elemental that the right to equal protection under state law includes the right to be tried in the same manner as others accused of similar infractions."

The procedure under which JOSEPH MONTY was tried both from the point of view of the Special Prosecutor and the specific Judge who tries all of the Special Prosecutor's cases was different from that involving other defendants tried in Queens County. The arrangement under which Mr. Monty's case was prosecuted by its very nature violates equal protection and due process of law. The same Governor who appointed

the Special Prosecutor specifically designated the trial judge and both of these offices have participated together in the indictment and trial of some 110 persons to date.

Under the procedure established Justice Murtagh has the responsibility to empanel and charge extraordinary panels of the Grand Jury when and where they are needed, to act as legal advisor to the Special Grand Jury, to give legal instructions when necessary, to pass upon arrest warrants, search warrants and eavesdropping applications, to receive indictments voted upon by said Grand Jurys and to review documents to determine the efficiency of evidence. In addition, to decide on pre-trial motions, set bail and to preside at the trial of all cases. It is interesting to note that in a recent New York Times article[1] Judge Murtagh was quoted extensively regarding his supervision over investigations of the Special Grand Jurys in the five counties of New York. Under this arrangement there cannot help but arise a conscious or unconscious relationship which effects the very fact and appearance of fairness and impartiality. In fact, in a recent decision by the Appellate Division, First Department, where a reversal was ordered, the court emphasized that the charge of Judge Murtagh

[1] New York Times, page 1, October 17, 1974

in that case when read as a whole was prejudicial in that it emphasized the strength of the prosecution's case in derogation of the requirement to give balanced instructions to the jury in a criminal trial. See People v. Richard Bell, 45 A.D. 2d 362 (1974).

The right to a fair and impartial Judge is a right protected by the Constitution of the United States. See Tumey v. State of Ohio, 273 U.S. 510 (1927); Matter of Murchison, 349 U.S. 133 (1950). In Murchison, the United States Supreme Court stressed the importance of the impartiality of a judge and stated "that every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." The American Bar Association Standards relating to the function of a trial judge also stresses the importance of impartiality on the part of the judiciary. Section 1.5 A.B.A. Standards 1972. See also 48 C.J.S., Section 72.

Thus in the instant case the special procedure established discriminated against the petitioner and denied him the right to a fair trial in violation of his rights to due process and equal protection of the laws.

The pro-prosecution bias of the trial judge which would naturally arise out of the special relationship established by the specific procedures, in fact manifested itself in specific occurrences throughout the petitioner's trial. Defense counsel, both in pre-trial motions and in two instances during the trial and sentence, moved to disqualify Judge Murtagh from hearing the case. All of said motions were denied. (See Record on Appeal, App. Div., pages 12a, 9, 1509).

These motions to disqualify were made on the basis that the trial judge had held an ex parte conference with the Special Prosecutor for several hours on the day just before trial. The record reveals that the trial court admitted to such a meeting and the Judge stated on the record that the conversations had to do with the general work of this investigation. At another point the trial judge refused to request that the jury be polled with regard to reading any newspaper articles on the case unless they were specifically informed that this was the request of the defense.

The record below also contains an affidavit of defense counsel, one JEFFREY ATLAS, that the trial judge actively attempted to obtain the petitioner's cooperation in other pending cases and

threatened to throw the book at him if he did not cooperate. See page 1381 of the Record. Other instances of partiality involving rulings on evidence are also present throughout the Record.

THE PETITIONER'S CONSTITUTIONAL RIGHT OF CONFRONTATION WAS VIOLATED BY ALLOWING HEARSAY TESTIMONY.

The petitioner's conviction was based on allegations that he had received the use of complimentary cars from Avis Rent-A-Car Company in return for assistance rendered by him in collecting bad debts owed by Avis Rent-A-Car customers. Throughout the trial testimony was allowed from several rent-a-car officials as to what one FRED MASSARO told them regarding his dealings with the petitioner. FRED MASSARO never testified at the trial and the entire case was based upon these alleged statements of Massaro.

Under the rulings in Bruton v. U.S., 391 U.S. 123 (1968); Pointer v. Texas, 380 U.S. 400, this constituted a violation of the defendant's right to confrontation. It should be noted that there was no provision for the allowance of these hearsay declarations as no conspiracy charge was present in the case. A full examination of the Record clearly reveals the full effect and scope of these various hearsay statements.

The issue regarding the constitutionality of the specific designation of the trial judge involved in the case at bar in cases involving the Special Prosecutor has been raised in numerous cases either completed or presently pending in the Courts of New York.

A somewhat similar issue has been raised in the Watergate trial presently pending, involving former Attorney General John Mitchell. U.S. v. Mitchell, 15 CrL 2196 (U.S. Dist. Ct., D.C. 4/30/74). The issue of whether a specifically designated judge who has participated in pre-trial conferences and investigations could properly sit as the trial judge is thus of great importance and extremely relevant at the present time and merits the attention of this Court.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

SPIROS A. TSIMBINOS
WILLIAM S. KOHN
Attorneys for Petitioner
Office & P.O. Address
125-10 Queens Boulevard
Kew Gardens, N. Y. 11415
Telephone: (212) 699-6110

APPENDIX A

DETERMINATION OF THE ISSUES IN THE COURTS BELOW:

DECISION OF JOHN M. MURTAGH, J.
October 16, 1973

SUPREME COURT OF THE STATE OF NEW YORK
EXTRAORDINARY SPECIAL AND TRIAL TERM
COUNTY OF QUEENS

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JOSEPH MONTY,

Defendant.

MURTAGH, J.:

The defendant has made several motions, all of which will now be decided.

The defendant has applied for an order dismissing the indictment on the ground that the Executive Order appointing the Special Prosecutor is unconstitutional.

The application is without merit. Similar relief was denied in People v. Norman Levy, decided by the Appellate

Division, Second Department, N.Y.L.J., May 24, 1973, p. 19, col. 6.

At issue are the recent executive orders directing the Attorney General of the State of New York to appoint a special deputy attorney general to supersede each of the district attorneys in the five counties of New York City in all cases relating to the administration of criminal justice. The constitutionality and legality of these orders is free of any doubt. Legal and historical precedent justified the action of Governor Nelson A. Rockefeller. Recurring exposures of corruption in New York City mandated such action. See Pitler, Superseding District Attorneys, 41 Fordham L.Rev. 517-548 (1973).

The motion to inspect the grand jury minutes is granted.

After reading the grand jury minutes, the Court grants the motion of the defendant as follows:

The first and second counts are consolidated so that the defendant is charged as presently charged in the first count of the indictment except that the period covered shall read "November, 1969 and in or about November, 1972."

The third, fourth and fifth counts are dismissed.

The dismissal of these counts is predicated on the provisions of Article 155 of the Penal Law. Under Section 155.05-2e and Section 155.40, proof must be presented that there was an animus furandi. While this was not true under Article 80 of the old Penal Law, People v. Fichtner, 281 App.Div. 159, 118 NYS 2d 392 (1952), aff'd. mem. 305 NY 864, 114 NE 2d 212 (1953), it is a requirement under Section 155.05-2.

In all other respects, the motion to dismiss the indictment is denied.

That part of the motion for a bill of particulars is granted to the extent that answers to questions A.-1; B.-1; C.-1 shall be provided to defense counsel by the Special Prosecutor, and is in all other respects denied, as being evidentiary in nature (CPL § 200.90 subd. 3; People v. Spina, 14 A.D. 2d 505).

The motion for discovery is granted in accordance with the provisions of CPL 240.10 and 240.20, and is in all other respects denied.

The motion requesting an order in which the undersigned would disqualify himself from presiding at the trial of this indictment is denied.

Dated: October 16, 1973

s/ J.M.
J. S. C.

ORDER OF JOHN M. MURTAGH, J.
October 16, 1973

P R E S E N T :

Hon. JOHN MURTAGH
Justice

Ind. No. 2103/73

(SAME TITLE) OMNIBUS Motion to inspect the Grand Jury minutes and to dismiss the indictment; for a bill of particulars; for discovery and inspection and for disqualification of the Justice presiding at the trial of this ind.

The following papers numbered 1 to 3 submitted in this motion

Submitted JULY 3 ,1973
Argued ,197
Hearing ,197

Jeffrey Atlas, Esq.
For the Motion

Special Prosecutor
Maurice Nadjari
Opposed

	Papers Numbered
Notice of Motion and Affidavits Annexed	1 - 2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	
Replying Affidavits	
Exhibits	
Minutes Grand Jury	3

Upon the foregoing papers, and the opinion of the Court herein, the motion is disposed of as follows: the first branch of the motion, to inspect the Grand Jury minutes and to dismiss the indictment, is granted to the extent that the first and second counts of the indictment are consolidated so that the defendant is charged as presently charged in the first count of the indictment except that the period covered shall read "November, 1969 and in or about November, 1972." The third, fourth and fifth counts of the indictment are dismissed. In all other respects the first branch of the motion is denied. The second branch of the motion, for a bill of particulars,

GRANTED:

Date: October 16, 1973

John J. Durante

JOHN MURTAGH
J.S.C.

Peo v.: JOSEPH MONTY
Ind.No. 2103-73

is granted to the extent that the Special Prosecutor is directed to furnish defense counsel the information sought in items A-1, B-1 and C-1. In all other respects the second branch of the motion is denied.

The third branch of the motion, for discovery, and inspection, is granted in accordance with the provisions of sections 240.10 and 240.20 of the Criminal Procedure Law and is denied in all other respects.

The fourth branch of the motion, to disqualify the Justice presiding at the trial of this indictment, is denied.

....JOHN.MURTAGH.....
J.S.C.

OPINION OF THE APPELLATE DIVISION,
SECOND DEPARTMENT, SUPREME COURT
OF THE STATE OF NEW YORK-July 29, 1974.

___A D 2d____ A - June 3, 1974.

1159 E The People, etc., respondent,
v. Joseph Monty, appellant.

Judgment of the Extraordinary Special and Trial Term, Supreme Court, Queens County, rendered March 18, 1974, affirmed.

During the course of the trial, the trial court repeatedly, and quite properly, reminded the jury of its duty not to discuss the case or read anything about it. On the fourth day of trial, defense counsel pointed to two small clippings in the Long Island Press reporting on the trial, and requested the court to poll the jury again to see if anyone had read either article. The Assistant Special Prosecutor contended that the two articles contained only a brief summary of the court testimony and could not prejudice defendant. Defense counsel persisted in asking for a poll of the jury. The court consented to defense counsel's request but insisted, over objection, that he would tell the jury that it was being polled at his request. The court thereafter so informed the jury. If the defendant was not entitled to have

the jury polled, the court should have denied his request. If he was entitled to have the jury polled the court should not have placed any possible onus for the request on the defense. However, in the entire setting of this case we deem the error harmless (CPL 470.05 subd. 1).

The case is remitted to the Extraordinary Special and Trial Term, Supreme Court, Queens County, for proceedings to direct appellant to surrender himself to said court in order that execution of the judgment be commenced or resumed (CPL 460.50, subd. 5).

HOPKINS, Acting P.J., LATHAM, SHAPIRO, CHRIST and BRENNAN, JJ., concur.

July 29, 1974. 1159 E

PEOPLE v. MONTY, JOSEPH

ORDER OF THE HONORABLE
HAROLD A. STEVENS, JUDGE
OF THE NEW YORK COURT OF APPEALS,
DENYING LEAVE TO APPEAL. (8/5/74).

STATE OF NEW YORK
COURT OF APPEALS

BEFORE: HON. HAROLD A. STEVENS,
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK

against

Joseph Monty

CERTIFICATE DENYING LEAVE

I, HAROLD A. STEVENS, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at New York, New York
August 5, 1974

s/ Harold A. Stevens
Associate Judge

*Description of Order: Application for continuance of bail denied also.
HAS

APPENDIX B

EXECUTIVE ORDER

STATE OF NEW YORK
EXECUTIVE CHAMBER

EXECUTIVE ORDER NO. 57

TO: THE HONORABLE LOUIS J. LEFKOWITZ
ATTORNEY GENERAL OF THE STATE OF NEW YORK
STATE CAPITOL
ALBANY, NEW YORK

I. Pursuant to article IV section three of the Constitution of the State of New York, the provisions of subdivision two of section 63 of the Executive Law and the statutes and law in such case made and provided, and in view of the recommendation of the Commission to Investigate Allegations of Police Corruption in the City of New York, I hereby require that you, the Attorney General of this State, attend in person, or by one or more of your assistants or deputies, an Extraordinary Special and Trial Term of the Supreme Court to be appointed by me to be held in and for the county of Queens at the County Court House and any other term or terms of the Supreme Court in and for the County of Queens, and that you, in person or by said assistants or deputies, appear before the grand jury drawn for said extraordinary term of said court, and before any grand jury or grand

juries which shall be drawn or which shall have heretofore been drawn for any other term or terms of said court, for the purpose of managing and conducting in said court and before said grand jury and said other grand juries any and all proceedings, examinations and inquiries and any and all criminal actions and proceedings which may be had or taken by or before said grand jury and grand juries concerning or relating to:

(a) any and all corrupt acts and omissions by a public servant or former public servant occurring heretofore or hereafter in the County of Queens in violation of any provision of State or local law and arising out of, relating to or in any way connected with the enforcement of law or administration of criminal justice in the City of New York;

(b) any and all acts and omissions and alleged acts and omissions by any person occurring heretofore or hereafter in the County of Queens in violation of any provision of State or local law and arising out of, relating to or in any way connected with corrupt acts or omissions by a public servant or former public servant arising out

of, relating to or in any way connected with the enforcement of law or administration of criminal justice in the City of New York;

(c) any and all acts and omissions and alleged acts and omissions occurring heretofore or hereafter to obstruct, hinder or interfere with any inquiry, prosecution, trial or judgment pursuant to or connected with this requirement;

and that you conduct, manage, prosecute and handle such other proper actions and proceedings relating thereto as may come before said court and that you conduct, manage, prosecute and handle all trials at said extraordinary term of court or at any term of said court at which any and all indictments which may be found and which may hereafter be tried, pursuant to or in connection with this requirement, and in the event of any appeal or appeals or other proceedings connected therewith, to manage, prosecute, conduct and handle the same; and that in person or by your assistants or deputies you, as of the date hereof, supersede and in the place and stead of the District Attorney of the County of Queens exercise all the powers and perform all the duties conferred upon you by the statutes and law in such case made and provided and this requirement

made hereunder; and that in such proceedings and actions the District Attorney of the County of Queens shall exercise only such powers and perform such duties as are required of him by you or your assistants or deputies so attending.

II. Pursuant to subdivision 8 of section 63 of the Executive Law, I also find it to be in the public interest to require that you inquire into matters concerning the public peace, public safety and public justice with respect to the subjects which are within the scope of this requirement, and I so direct you to do so in person or by your assistant or deputies and to have the powers and duties specified in such subdivision 8 for the purposes of this requirement.

III. For purposes of this requirement the following terms have the following meanings:

(a) "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(b) "Public servant" means (a) any public officer or employee of the state or any political subdivision thereof or of any governmental instrumentality within the

state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.

(c) "Corrupt acts and omissions" includes, but is not limited to:

(1) any act or alleged act by a public servant relating to his office but constituting an unauthorized exercise of his official functions;

(2) any failure or alleged failure by a public servant to perform a duty which is imposed upon him by State or local law or administrative rule or regulation or is clearly inherent in the nature of his office;

(3) any and all acts or omissions or alleged acts or omissions constituting a violation of the following sections or of the sections within the following articles of the Penal Law:

(i) Sections 135.60 and 135.65 (Coercion)

(ii) Article 155 (Larceny)

(iii) Sections 195.00 (Official Misconduct) and 195.05 (Obstructing governmental administration)

(iv) Article 200 (Bribery involving public servants and related offenses)

(v) Article 210 (Perjury and related offenses)

(vi) Article 215 (Other offenses relating to judicial and other proceedings;

(4) any and all acts or omissions or alleged acts or omissions constituting a violation of Penal Law articles 100 (Criminal Solicitation), 105 (Conspiracy), 110 (Attempt), and 115 (Criminal Facilitation) with respect to offenses defined in paragraph (3);

(5) any and all other offenses that may be properly joined with offenses defined in paragraphs (3) and (4);

IV. This requirement shall not apply to the management and conduct of the prosecution of any indictment filed in

said court on or before the date of this requirement.

G I V E N under my hand and the Privy Seal of the State at the Capitol in the City of Albany this 19th day of September in the year of our Lord one thousand nine hundred seventy-two.

(L.S.)

BY THE GOVERNOR

s/ Nelson A. Rockefeller

s/T.N. HURD
Secretary to the Governor

APPENDIX C

NEW YORK STATE CONSTITUTION
ARTICLE 6, SECTION 27.

(Extraordinary terms of the supreme court)

The governor may, when in his opinion the public interest requires, appoint extraordinary terms of the supreme court. He shall designate the time and place of holding the term and the justice who shall hold the term. The governor may terminate the assignment of the justice and may name another justice in his place to hold the term.

Adopted Nov. 7, 1961, eff. Sept. 1, 1962.

NEW YORK STATE JUDICIARY LAW
SECTION 149.

Governor may appoint extraordinary terms and name justices to hold them

1. The governor may, when, in his opinion the public interest requires, appoint one or more extraordinary special or trial terms of the supreme court. He must designate the time and place of holding the same, and name the justice who shall hold or preside at such term, and he must give notice of the appointment in such manner as, in his judgment, the public interest requires. The governor may terminate the assignment of the justice named by him to hold a term appointed pursuant to this section, and may name another justice in his place to hold the same term. In such event, the grand jury drawn to attend such term shall continue to serve thereat until discharged in the manner prescribed by law. A justice named to preside at an extraordinary term appointed under this section shall have power to order the drawing of a grand jury or grand juries in place of or in addition to the grand jury originally drawn for such term. Such other grand jury or grand juries shall be summoned in the manner prescribed for grand juries in general and shall be subject to all the provisions of law applicable to a grand jury summoned

pursuant to sections five hundred thirty-one, six hundred nine and six hundred eighty-four of this chapter.

2. A motion involving a matter pending before such extraordinary special or trial term shall be made returnable at such term, except that, in the exercise of discretion, a justice of the appellate division of the supreme court in the department in which such extraordinary special or trial term is being held may grant permission for such motion to be heard at a term of such appellate division.

RULES OF THE QUEENS COUNTY
SUPREME COURT, SECTION 796.5(a)

**Assignment of Cases for Trial;
Method of Assignment**

(a) All indictments shall be assigned to the several parts of the criminal term by lot as hereinafter provided except that the justice presiding in Criminal Term, Part I, may without drawing or lot assign any indictment to a particular part whenever it appears that such indictment is related to another indictment theretofore assigned to that particular part for trial, or whenever such indictment names the same defendant as another indictment theretofore assigned to the particular part for trial. An assigned indictment shall remain in that part to which it was assigned for trial until disposition thereof, provided, however, that if in any particular term no justice is assigned to hold a part to which indictments had theretofore been assigned for trial which remain untried, such indictments awaiting trial at the conclusion of the term preceding that term for which no justice has been assigned to such part shall be returned to Criminal Term Part I for reassignment by lot to and among the other parts of the criminal term for which justices have been assigned. The justice presiding in a trial

part to which an indictment has been assigned may receive and dispose of a waiver of the right to trial by jury tendered by a defendant, and, at the discretion of said justice, the assigned indictment shall remain in said trial part notwithstanding the election to change the mode of trial from jury to non-jury.